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7
8 **BEFORE THE**
RESPIRATORY CARE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 1H 2007 104

11 DEREK DOUGLAS LOFLIN
12 1336 River Springs
Porterville CA 93257

A C C U S A T I O N

13 Respiratory Care Practitioner License No. 24445

14 Respondent.
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17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Respiratory Care Board of California,
21 Department of Consumer Affairs.

22 2. On or about July 15, 2005, the Respiratory Care Board issued Respiratory
23 Care Practitioner License Number 24445 to Derek Douglas Loflin (Respondent). The respiratory
24 care practitioner license was in full force and effect at all times relevant to the charges brought
25 herein and will expire on July 31, 2008, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Respiratory Care Board (Board),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “(d) Conviction of a crime that substantially relates to the qualifications,
12 functions, or duties of a respiratory care practitioner. The record of conviction or a
13 certified copy thereof shall be conclusive evidence of the conviction.”

14 “(g) Conviction of a violation of any of the provisions of this chapter or of any
15 provision of Division 2 (commencing with Section 500), or violating, or attempting to
16 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
17 violate any provision or term of this chapter or of any provision of Division 2
18 (commencing with Section 500).”

19 7. Section 3752 of the Code states:

20 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
21 made to a charge of any offense which substantially relates to the qualifications,
22 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
23 the meaning of this article. The board shall order the license suspended or revoked, or
24 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
25 conviction has been affirmed on appeal or when an order granting probation is made
26 suspending the imposition of sentence, irrespective of a subsequent order under Section
27 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
28 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the

1 accusation, information, or indictment.”

2 8. California Code of Regulations, title 16, section 1399.370, states:

3 “For the purposes of denial, suspension, or revocation of a license, a crime or act
4 shall be considered to be substantially related to the qualifications, functions or duties of
5 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
6 perform the functions authorized by his or her license or in a manner inconsistent with the
7 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
8 those involving the following:

9 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
10 abetting the violation of or conspiring to violate any provision or term of the Act.

11 “(c) Conviction of a crime involving driving under the influence or reckless
12 driving while under the influence.”

13 COST RECOVERY

14 9. Section 3753.5, subdivision (a) of the Code states:

15 "In any order issued in resolution of a disciplinary proceeding before the board,
16 the board or the administrative law judge may direct any practitioner or applicant found to have
17 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
18 investigation and prosecution of the case."

19 10. Section 3753.7 of the Code states:

20 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
21 include attorney general or other prosecuting attorney fees, expert witness fees, and other
22 administrative, filing, and service fees."

23 11. Section 3753.1 of the Code states:

24 "(a) An administrative disciplinary decision imposing terms of probation may
25 include, among other things, a requirement that the licensee-probationer pay the monetary costs
26 associated with monitoring the probation. "

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1 FIRST CAUSE FOR DISCIPLINE

2 (Conviction)

3 12. Respondent is subject to disciplinary action under sections 3750(d) and
4 (g), 3752 [conviction], and CCR 1399.370(a) and (c) in that in 2007, he was convicted of driving
5 under the influence of alcohol. The circumstances are as follows:

6 13. On or about February 25, 2007, California Highway Patrol Officer J.
7 Parish observed an individual (later identified as respondent by his California driver's license)
8 driving erratically. Respondent turned sharply to the right and the right side tires were in the
9 gutter, nearly striking the raised concrete curb. After completing the turn, respondent drove in
10 the middle of two merging traffic lanes and accelerated rapidly. Respondent was weaving from
11 right to left as he drove. He turned into a parking lot, and Officer Parish initiated an enforcement
12 stop for unsafe turning movements.

13 14. As Officer Parish spoke to respondent, he smelled the odor of alcohol on
14 his person. He asked respondent how much alcohol he had consumed and respondent replied
15 "eight bottles of Bud Light" at his home in Porterville. Officer Parish instructed respondent to
16 walk to the front of the patrol car, and noticed respondent's gait was unsteady, and his eyes were
17 red and watery. Respondent also expressed that it was probably not a good idea for him to be
18 driving given the way he felt after drinking eight beers.

19 15. Officer Parish explained and demonstrated a series of field sobriety tests
20 which respondent did not perform as instructed. Based upon the officer's observations,
21 respondent's statements and his performance on the field sobriety tests, Officer Parish arrested
22 respondent for violating Vehicle Code section 23152(a), driving under the influence of alcohol
23 and/or drugs and Vehicle Code section 23152(b), driving with a blood alcohol level above .08%.
24 Respondent chose to take a breath test, and provided two breath samples with results of
25 .18%/.19% alcohol levels.

26 16. On or about March 9, 2007, a misdemeanor complaint titled *People of the*
27 *State of California vs. Derek Douglas Loflin*, case no. PCM179967 was filed in Tulare County
28 Superior Court, Porterville Division. Count 1 charged respondent with a violation of Vehicle

1 Code section 23152(a), driving under the influence of alcohol. A special allegation was charged
2 based on respondent's prior conviction on September 30, 2002 for violating Vehicle Code
3 section 23152(b), driving with a blood alcohol level above .08%. It was further alleged that
4 respondent had a blood alcohol content of .15% and more within the meaning of Vehicle Code
5 section 23578.

6 17. Count 2 charged respondent with a violation of Vehicle Code section
7 23152(b), driving with a blood alcohol level above .08%. A special allegation was charged
8 based on respondent's prior conviction on September 30, 2002 for violating Vehicle Code
9 section 23152(b), driving with a blood alcohol level above .08%. It was further alleged that
10 respondent had a blood alcohol content of .15% and more within the meaning of Vehicle Code
11 section 23578.

12 18. On or about March 19, 2007, respondent was convicted on his plea of
13 guilty to a violation of Count 1, Vehicle Code section 23152(a), driving under the influence of
14 alcohol and Count 2, Vehicle Code section 23152(b), driving with a blood alcohol level above
15 .08% with special allegation Vehicle Code section 23578, .blood alcohol content of .15% and
16 more. He admitted the prior conviction. He was sentenced to five years summary probation,
17 ordered to serve twenty eight days in jail starting May 11, 2007. His sentence was stayed
18 pursuant to Penal Code section 654 as to Count 2. He was ordered to pay fines and attend and
19 successfully complete SB 38 program, and enroll within sixty days.

20 19. Therefore, respondent's license is subject to discipline pursuant to code
21 sections 3750(d) and (g), 3752 [conviction], and CCR 1399.370(a) and (c) in that he was
22 convicted of violating Vehicle Code sections 23152(a) and (b), which are substantially related to
23 the practice of respiratory care.

24 MATTERS IN AGGRAVATION

25 20. On or about September 30, 2002, respondent was convicted on his plea of
26 guilty to violating Vehicle Code section 23152(b), driving with a blood alcohol level above
27 .08%. His blood alcohol level at the time of the incident was .18%/.19%.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Revoking or suspending respiratory care practitioner license Number
5 24445, issued to Derek Douglas Loflin.

6 2. Ordering Derek Douglas Loflin to pay the Respiratory Care Board the
7 costs of the investigation and enforcement of this case, and if placed on probation, the costs of
8 probation monitoring;

9 3. Taking such other and further action as deemed necessary and proper.

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11 DATED: March 12, 2008

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14 Original signed by Liane Zimmerman for:
15 STEPHANIE NUNEZ
16 Executive Officer
17 Respiratory Care Board of California
18 Department of Consumer Affairs
19 State of California
20 Complainant

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